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HB425- Janet Kempff, Bozeman, Licensed Land Surveyor
(Supporter of planning and zoning)

I think I support this bill, but I have mixed feelings. My comments and concerns center around the family transfer exemption. I have studied numerous Gallatin County cases and I have discussed this issue with County Commissioners and Planning staff from across the state. I come to you with specific constructive suggestions, not just pro and con rhetoric.

A bit of background first: The Montana Platting and Subdivision Act was enacted to promote public health, safety and general welfare. **Exemptions are allowed only in exceptional circumstances.** In 1973 it was felt that one such 'exceptional' circumstance was to allow parents to gift a parcel to their children so they could live next to and participate in a family agricultural operation. The 1973 language in the subdivision law is simply stated and does not include an explanation of the intent. I've been told that at the time the legislators did not recognize the need to specify their intent in the actual wording of the law. Land use and values have changed in many parts of the state over the past 34 years. Today the Family Transfer Exemption is being used in ways that are beyond its original intent. It is used-

- 1) by agricultural families as intended
- 2) by non-ag families in the same way as it was intended (to create parcels for family members to build a home next to the parent parcel)
- 3) by some landowners to create parcels for sale (cash profit)

Through this exemption, hundreds of lots are being put on the market in Montana each year without review regarding emergency access, neighborhood impacts, road standards, cost of service implications and other public health and safety issues. The creation of these lots is contrary to the intent and purposes of the Subdivision Planning Act and it creates inequities between neighboring properties.

You have taken a few steps towards control of the family transfer. The first addresses access and utilities on PAGE 5, LINE 20-22. That is an important issue for parcels created by the family transfer exemption, 1(b), and I encourage you to keep this wording in the law. I suggest you reconsider this requirement for some of the other exemptions, because it is not necessary. For example: parcels created under 1(f), eminent domain, may not need road or utilities if the land is being added to existing federal ownership; and cemeteries, 1(g), and ag parcels, 1(c), likely do not need utilities; and right-of-ways, 1(h) don't need road access, etc.

Your second step towards control of the family transfer parcels is on PAGE 5, LINES 4-7. It appears as the proposed two year time limit on the sale of created parcels is meant to discourage the use of the family transfer exemption to create parcels for sale. It concerns me that this wording in itself will give the impression that it is OK to use the family transfer exemption to create parcels with the intention of sale. I want to remind you that creation of parcels for sale was not the intention of the law when it was written in 1973. LC2075 has been proposed to return the family transfer exemption to its original intent. Your proposed bill will not have any negative impacts on that proposal.

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Numerous County Commissioners and Planning staff from the 'growing' counties have told me that it is a struggle to determine validity each time they review a family transfer exemption application. They attempt to require landowners to use the parcels as 'intended by the law' but they do not have solid backing in wording of the law. I encourage you to take this opportunity to assist Montana local governments by incorporating the following language that sets defining boundaries for a legitimate use of the Family Transfer exemption. The boundaries should have been spelled out back in 1973, but they didn't foresee the need at that time. I suggest the following amendments to HB425:

1. **Incorporate a tracking system.** For this proposal to be functional, it is essential for the local government to establish a method to track the sale 'waiting period'. Lake County has been using a deed restriction system. It seems to be the easiest and cleanest and least time consuming to county staff. I have enclosed a sample deed restriction in my handout to you today.
2. **Specify an allowable range of years before sale.** Your wording implies that you are willing to allow counties to change the sale waiting period in 76-3-504(1)(p). It would provide much needed support to local governments if the law would name a range of say, 2-10 years, so they have the latitude to select what fits their situation best.
3. **Don't allow the parcel to be reconveyed to the grantor.** Allowing this scenario is contrary to the purpose of the exemption, but unless it is spelled out in the law it will continue to happen. (I can provide numerous examples).
4. **Don't allow a deed to a minor.** Once again, the intent of family transfer exemption is for the family member to develop and live on the adjacent land. It doesn't make sense to deed to a minor. Some families claim that selling a parcel of land is their only way to pay for college for a child. They have 18 years to plan this expense, so I would hope that a minor subdivision be reviewed in that amount of time.

Specific suggested language, color coded with comments above:

Section 15-16-102, Section 4(3)(e)- "the parcel created by a division under subsection (1)(b) may not be further conveyed for a period of 2 years, or for the period of time up to 10 years specified in regulations adopted under 76-3-504(1)(p), from the date of the transfer of interest from the grantor to the grantee, and may not at any time be reconveyed to the grantor without aggregation with the parent parcel. The period may be waived by the governing body upon determination by the governing body that the waiver of the period is appropriate. Filing of any certificate of survey (or recording of an instrument of conveyance) that would use this exemption to create a parcel for conveyance to a family member must be accompanied by a deed or other conveying document, and a deed restriction that names the parent parcel and contains language stating that the parcel being conveyed was created as an exemption per Section 15-16-102, Section 4(1)(b) MCA and that there is a time restraint on its further conveyance."

76-3-103(8) "Immediate family" means spouse, adult children by blood or adoption, and parents.

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I appreciate the fact that you are taking the time to address the growing problem of Family Transfer exemption parcels. I ask you to please incorporate additional language in this bill to return use of the Family Transfer Exemption at least closer to its original intent and to stop inappropriate use of the exemption. This approach represents a balance between public health, safety and welfare and private property rights.

When you listen to arguments by opponents, please think back on these alternatives I have presented and remember that landowners always have the opportunity to create a tract for sale by going through the Minor Subdivision process. These suggestions do not take away the exemption benefit (which many folks have suggested), but instead they work toward returning its use to being a true 'exception'. Incorporating these ideas would be a positive step to make the process much more clear for all those involved, benefit future landowners and further the established planning process.

Janet Kempff
10806 LS

DEED RESTRICTION

Regarding Local Requirements for parcels created through the Family Transfer Exemption of the Montana Subdivision and Planning Act

WHEREAS, I/(we), _____
the undersigned owner(s), desire to create a parcel to transfer to my/our _____, _____ on
the property described below:

Survey name/number: _____
located in Section _____, Township _____ N, Range _____ W, Lake County, Montana,
Geo-code _____

The above referenced _____ acre property occurs within an area currently designated as a "_____-acre per
unit Development Density Region" under the Lake County Density Map and Regulations, which are
zoning regulations adopted under Title 76, chapter 2.

WHEREAS, The Lake County Board of Commissioners has approved the use of this family transfer
exemption; and

WHEREAS, The Board is concerned with attempts to evade the Subdivision and Platting Act, therefore as
a condition of approval the Board has been requiring that grantees may not convey the new parcel for two
years commencing from the date of final plat approval upon filing of the certificate of survey and transfer
documents.

THEREFORE For this consideration, I/(we), the undersigned owner(s) of the above-described property, do
consent to a restriction being placed on the deed to the property that requires that said parcels shall not be
conveyed for a period of two years from the date of final plat filing without additional approval of the
governing body. I/(we) further understand and acknowledge this agreement may be amended or removed
by the Lake County Board of Commissioners in cases where hardships relating to health, education,
property loss or similar circumstances exist.

Owner

Date

Owner

Date

NOTARY WITNESS OF SIGNATURES

State of _____
County of _____
On this _____ day of _____, 200____, before me the undersigned, a Notary Public for the
State of Montana, personally appeared _____ known by me to be the person(s) whose name(s)
is/are subscribed to the above instrument and acknowledged to me that _____ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year of this Certificate first above written.

Notary Public for the State of _____
Residing at _____
My commission expires _____
Filed on this _____ day of _____